IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 650 of 1998

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AHMEDABAD MUNICIPAL TRANSPORT SERVICE - Petitioner(s)
Versus
HASMUKHLAL CHUNILAL BHAVSAR - Respondent(s)

==========

Appearance :
MR HS MUNSHAW for Petitioner(s) : 1,
MS PC FERNANDIS for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 13/07/2007

ORAL JUDGMENT

1. Heard Mr.H.S. Munshaw, learned counsel for the petitioner and Ms.P.C. Fernandis , learned counsel for the respondent.

2. The petitioner, being aggrieved by the order

dtd.23/12/1997 passed by the Presiding Officer, Labour Court, Ahmedabad in Recovery Application No.2033 of 1989, is before this Court with the submissions that neither the application was maintainable under sec.33-C-2 of the Industrial Disputes Act, nor the same could be allowed on the merits.

3. Short facts necessary for disposal of the writ application are that the present respondent workman tendered his resignation letter on 11/6/986, it was accepted w.e.f. 11/6/1986, in lieu of the notice, the workman deposited one month's salary with the petitioner employer. Thereafter, the workman withdrew a sum of Rs.25,296.38 ps. deposited under the Contributory Provident Fund Scheme, because at the time of his resignation, there was no scheme for grant of pensionary benefits.

4. Under the Circular dtd.2/2/1984, the petitioner evolved a scheme contending inter-alia that the employees may opt for Contributory Provident Fund Scheme or may go for pensionary benefits. The respondent workman, thereafter, taking advantage of yet another resolution No.102 dtd.31/3/1987, which implemented the scheme,

made an application that he be given pensionary benefits. The petitioner corporation denied the rights saying that the scheme was applicable to the persons who were either in service, or, who had retired by reaching the age of superannuation and the same would not apply to the persons who had tendered their voluntary resignation.

5. In view of the dispute raised by the present petitioner employer, the workman, instead of filing a Reference under sec.10 of the Industrial Disputes Act, made an application under sec.33-C-2 of the Industrial Disputes Act. The present petitioner defended the application on various counts and submitted that there was distinction between retirement and resignation, therefore, the application was not maintainable. Despite there being a dispute relating to entitlement of the workman and application of the scheme, the Labour Court allowed the recovery application.

6. Mr.Munshaw, learned counsel for the petitioner submitted that proceedings under sec.33-C-2 of the Industrial Disputes Act are in nature of recovery / execution and if

there is no pre-existing undisputed right or pre-adjudicated right in favour of the workman, an application under sec.33-C-2 of the I.D. Act would not be maintainable. Even on the merits, he submitted that the respondent workman, having resigned from the services, would not be entitled to the pensionary benefits flowing from the scheme of 1984.

7. Ms.Fernandis, learned counsel for the respondent, on the other hand, submitted that as 1984 Circular was made effective under Circular dtd.31/3/1987 and a person, who resigned and retired as a resignee, would be entitled to such benefits. She submitted that the learned Labour Court, after considering the pros and cons, has come to the right conclusion.

8. It would be trite to say that an application under sec.33-C-2 of the Industrial Disputes Act is in nature of an execution. The execution would only be maintainable if there is pre-existing undisputed right or there is some pre-adjudicated right in favour of the claimant. If the Labour Court is required to make an inquiry into the entitlement of the claim, then, an application under

sec.33-C-2 of the Industrial Disputes Act would not be maintainable. As the application itself, in the opinion of this Court, not maintainable, this Court is not required to enter into the larger issue pertaining to the merits.

9. The petition deserves to be allowed, it is accordingly allowed. The impugned order passed by the learned Labour Court is hereby quashed. No costs.

(R.S. GARG, J.)

rafik